



COMMISSIONER FOR  
BETTER REGULATION

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19 March 2018

Ms Rebecca Falkingham  
Deputy Secretary, Social Policy and Service Delivery Reform  
Department of Premier and Cabinet  
1 Treasury Place  
EAST MELBOURNE VIC 3002

Dear Ms Falkingham

I would like to thank the staff of Aboriginal Victoria (AV) for working with the staff at the OCBR on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Aboriginal Heritage Regulations 2018*. These Regulations are proposed due to the sunset of current arrangements in May 2018.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner's role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 March 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

The main objective of Victoria's regulatory framework is to protect and manage Aboriginal cultural heritage during land use and development activities. The current Regulations cover:

- the types of activities and the types of land in Victoria that determine whether a Cultural Heritage Management Plan (CHMP) must be prepared prior to undertaking those activities;
- the standards for preparing a CHMP including what the CHMP must include and how detailed the assessment of that plan must be; and
- fees payable to AV and Registered Aboriginal Parties (RAPs) for services including:
  - notices of intention to prepare a CHMP; and
  - applications seeking approval of a CHMP.

The proposed Regulations expand the:

- range of activities that are defined as high impact and will, therefore, require a CHMP to be prepared if undertaken in an area of cultural sensitivity (e.g. the construction of residential villages, or the construction of fuel breaks that require a permit to remove native vegetation); and
- types of land that are defined as areas of cultural heritage sensitivity and on which prescribed types of activity can only be undertaken if a CHMP is prepared (e.g. parks and reserves managed for conservation purposes).

Overall, compared to the current regulations, the proposed Regulations will not increase the total cost of Victoria's regulatory framework. AV estimates that the total impact of preparing CHMPs will be around \$22 million per year in compliance costs, or around \$184 million over ten years (in net present value (NPV) terms). AV notes that the benefits of preserving Aboriginal cultural heritage are

difficult to quantify. Therefore, AV has been clear about which benefits it has tried to measure. Based on the available literature on valuing heritage, AV estimates that the preparation of preparing CHMPs yields net quantified benefits to the community of around \$21 million over ten years (NPV).

The proposed Regulations also make changes to the fees charged by AV or RAPs to better reflect the cost of the activities they undertake. Compared to the current fees, these changes result in no substantive change in total revenue raised from fees. They instead increase fees for activities that are currently recovering less than the estimated cost of those activities, and decrease fees for activities that are currently recovering more than the estimated cost of those activities. AV estimates that fee revenue will be around \$1.9 million per year, or around \$16.2 million over ten years (NPV).

Given the wide variation in the costs of preparing CHMPs and the difficulty in quantifying the benefits of the Regulations, AV intends to conduct annual evaluations of the proposed Regulations, and identifies a range of measures that will be used to assess their impact on Aboriginal cultural heritage, regulatory burden, and whether the prescribed fees are appropriate.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

**Commissioner for Better Regulation**